IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

P.I.L.No.145 of 2006

Bhimraj Deepchandji Kothari)
an Indian Inhabitant of)
Mumbai, aged about 55 years)
Occupation business,residing)
at Hanuman Mandir Marg,)
Marol Gaon, Andheri (East))
Mumbai 400 059) ..Petitioner

vs.

1. State of Maharashtra)
through Urban and Land)
Ministry having his office)
at New Administrative)
Building, Opp.Mantralaya)
Mumbai 400 032)

2. The Additional Collector)
and Competent Authority)
(ULC), ULC Department,)
Administrative Building,)
near Chetana College)
Bandra (E), Mumbai 400051)

3. Tahsildar)
Taluka Andheri, near)
Navrang Talkies, Andheri)
(West), Mumbai 400 058)

4. M/s Tyabji Estates)
Private Limited, having)
his officer at 1017/18)
Dalamal Towers, 10th)
floor, Nariman Point,)
Mumbai 400 021) ..Respondents

Mr.V.A.Thorat, Sr.Advocate i/b Mr.A.K.Pande and Co. for petitioner.
Mr.K.R.Belosey, Govt.Pleader for respondent nos.1 to 3
Mr.Venkatesh Dhond i/b M/s Federal and Rashmikant for respondent no.4.

Judgment Reserved on: 21.6.2007
Judgment delivered on: 19.7.2007

CORAM: SWATANTER KUMAR C.J.
AND S.C.DHARMADHIKARI J.
19th July, 2007

ORAL JUDGMENT: (Per S.C.Dharmadhikari J.)

1. The Public Interest Litigation prays for issuance of a writ of certiorari or any other writ, order or direction in the nature thereof to quash and set aside the order dated 14th December, 1999 passed under sec.8(4) of the Urban Land (Ceiling and Regulation) Act, 1976, for short ULC Act. The copy of the order impugned is at Exh.H to the petition.

2. The petitioner claims to be a public spirited citizen, social worker as also a businessman. The petitioner has a jewellery business at Andheri, Mumbai.

3. The grievance of the petitioner is that respondent nos. 1 to 3 have committed gross illegalities in granting permission to respondent no.4 for development on a plot of land bearing Survey Nos. 33 to 59 admeasuring in all 74 acres 19.3/4 gunthas situate at village Majas, Taluka Andheri, Mumbai.

4. It is pointed out that one Ismail Mohammed was the

owner of this property and he had 3 sons. The said Ismail died intestate and the property has been transferred in the names of the sons of the deceased Ismail.

5. It is the grievance of the petitioner that by a Registered Conveyance two out of the three sons of the deceased Ismail transferred and sold this property to a third party and details of conveyance and the transferees are set out in the petition.

6. It is contended that the property was inheritted by 3 sons of the deceased but no particulars of the third son joining in the deal are to be found. Therefore, it cannot be assumed that third son Suleiman has joined in the conveyance in favour of the transferee.

7. The transferees are Tyabji family. They have incorporated respondent no.4 which is a private limited company and original transferees have sold, transferred and assigned their right, title and interest in the property in favour of respondent no.4.

8. The principal grievance is that without ascertaining the details of all the sons of the deceased and also the authenticity of the documents, respondent nos. 1 to 3 had

permitted respondent no.4 to develop the property in accordance with the scheme filed under the ULC Act.

9. The details of the application made with regard to the computation of surplus vacant land and notice issued thereon so also the finalised statements are to be found in paras 15 to 19 of the petition. In the above said circumstances, Mr.Thorat, learned Senior Counsel appearing for the petitioner, submits that the order dated 14th December,1999 under sec.8(4) of the ULC Act is vitiated. According to the petitioner, if the records had been perused in their entirity and proceedings held in accordance with law, the computation of the surplus vacant land and the portion permitted to be retained by respondent no.4 could not have been arrived at by the authorities. In such circumstances, in public interest this order should be set aside.

10. Affidavits have been filed in reply to this petition by the State as well as respondent no.4.

11. The State through the Additional Collector, Thane, the Competent Authority, ULC, has pointed out that the land bearing C.T.S.Nos.166, 14, 167, 77, 78, 79 and 80

which is held by respondent no.4 forms one compact block. There are authorised structures on these lands. The structures are shown in the original city survey plan by Black Ink and the tenure of the land is shown as Authorised Non-Agricultural use. It is in these circumstances that the Competent Authority has worked out an area under the plinth and the land appurtenant of the structure i.e. they have been held as non Vacant Lands. The Authority has rightly allowed and excluded the structures as they were used as dwelling units. The area under Reservation was also treated as non vacant. It is in such circumstances about 500 sq.meters of land was allowed as within the ceiling unit. It was permitted to be retained. The other land is shown as provisional surplus vacant land. Thereafter the statement was finalised and the impugned order has been passed. The application under sec.20 seeking exemption was not decided because the statement under sec.8 was not finalised. Upon its finalisation under the impugned order, the authorities noted that there is no surplus vacant land. It is in these circumstances, that the impugned order has been passed.

12. Apart from these contentions, the respondents have challenged the maintainability of the petition on the

ground that the same is in pure private interest. It is a private dispute. It is filed at the instance of one Abid Bahadur Choudhary, the slum lord. The details about the said Choudhary and the petitioner being the power of attorney holder of the said Choudhary are set out in the affidavit of respondent no.4 and it is contended that this is not a bonafide public interest litigation.

13. Apart from that, both State as well as respondent no.4 appearing through their respective counsel have urged that the present petition is barred by delay and latches. The order under challenge is dated 14th December, 1999. After the said order, respondent no.4 has commenced development of the plot and he is constructing 10 buildings having aggregate of 614 tenements. 5 buildings have been completed and 5 buildings are under construction. 5 buildings which have been completed contain in all 318 flats out of which 316 have been sold. In sofar as 5 buildings which are under construction are concerned, 296 flats are proposed therein out of which 115 have already been sold. The third party rights have thus intervened. The flat purchasers have availed of Bank Loans by mortgaging these properties/flats. In such circumstances, this petition should not be entertained.

14. We enquired from the learned Senior Counsel appearing for the petitioner with regard to these facts and the learned Counsel has invited our attention to the affidavit in rejoinder filed by the petitioner. However, he was unable to offer any explanation with regard to the belated challenge. There is thus no explanation for the delay and latches. The petition is hopelessly delayed in as much as the petitioner being aware of the proceedings and the construction has not bothered to move this Court or any authority. This petition has been filed on 14th August, 2006 to challenge the order dated 14th December, 1999. The seven years delay and complete silence about the knowledge of the petitioner about the progress of work at site are factors which cannot be brushed aside.

15. Hence, apart from the fact that the petitioner could not substantiate his challenge to the impugned order by demonstrating public interest involved, we find that the petition is hopelessly barred by delay and latches. In Chairman and M.D.,B.P.L.Ltd. Vs.S.P.Gururaja and other reported in AIR 2003 Supreme Court 4536 the Hon'ble Supreme Court has observed that the principle of delay and latches applies to public interest litigation as well. In this context this is what is observed by the Hon'ble Supreme Court.

"26. In Narmada Bachao Andolan Vs. Union of India and others (2000) 10 SCC 664), this Court opined:

> "47. The project in principle, was cleared more than 25 years ago when the foundation stone was laid by late Pandit Jawahar Lal Nehru. Thereafter, there was an agreement of the four Chief Ministers in 1974, namely, the Chief Ministers of Madhya Pradesh, Gujarat, Maharashtra and Rajasthan for the project to be undertaken. Then dispute arose with regard to the height of the dam which was settled with the award of the tribunal being given in 1978. For a number of years, thereafter final clearance was still not given. In the mean time some environmental studies were conducted. The final clearance was not given because of the environmental concern which is quite evident. Even though complete data with regard to the environment was not available, the Government did in 1987 finally give environmental clearance. It is thereaftrer that the construction of the

> dam was undertaken and hundreds of crores have been invested before the petitioner chose to file a writ petition in 1994 challenging the decision to construct the dam and the clearance as was given. In our opinion, the petitioner which had been agitating against the dam since 1986 is gulty of laches in not approaching the Court at an earlier point of time.

"31. In the facts and circumstances, we do not find that the Board and the State had committed any illegality which could have been a subject matter of judicial review. The High Court in our opinion committed an manifest error insofar as it failed to take into consideration that the delay in this case had defeated equity. The allotment was made in the year 1995. The writ application was filed after one year. By that time the Company had not only took possession of theland but also made sufficient investment. Delay of this nature shall have been considered by the High Court to be of vital importance."

16. Tested on the touch stone of these principles w e

find that the petition is barred by delay and latches. The challenge is belated. Thus, without entering into the merits of the controversy, we are of the opinion that the petition deserves to be dismissed only on the ground of delay and latches. It is accordingly dismissed summarily.

(CHIEF JUSTICE)

(S.C.DHARMADHIKARI J.)